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Subject:— Opinions under the Indian Contract Act 1872

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Section 10 of the Bombay Public Security Measures Act, 1947 , empowers the State Government, by notification in the Official Gazette, to c nstitute special courts of Criminal jurisdiction for such area as may be specified in the notification . There is no provision in the Act which limits the period for which such courts shall function, nor is there any provision empowering Govern ent sp cifically to cancel such notification. Consequently, the pri ciple underlying section 21 of the Bombay General Clauses Act, 1904, viz. that the power to issue a notification includes the power to rescind such notification will be applicable. The view expressed by the Home Department is correct. In this connection the attention of the Home Department is invited to the recent decision of the Supreme Court reported in the Times of ndia dated the 12th January, 1952 regarding the unconstitutionality of Special courts constituted under the West Bengal Courts Act, 1950.

S d/- P.H.Lad

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O.O. Remembrancer of Legal Affairs.

U.H. to H.D.No. 1852, dated ~~xxx~~ the 5th February 1952.

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Section 6(1) of the Bombay Public Security Measures Act, 1947, provides that if the State Government is satisfied that the inhabitants of any area are concerned in the commission or abetment of offences affecting the maintenance of public order, the State Government may by notification in the official gazette impose a collective fine on the inhabitants of that area. It is presumed that the other reasons for imposing a fine mentioned in sub-section (1) are not available in this case as no reference to them has been made in the papers on record. The word "affecting" in this context means "influencing, ie touching upon or having an effect on." This word in its etymology and usage in such context means "acting injuriously upon; operating upon a particular object" in this case the maintenance of public order. There can be no manner of doubt/that the offences of grievous hurt and murder as such are offences affecting public order. Nor can there be any doubt that insulting the modesty of a woman in a public place by words or gestures is an offence affecting the maintenance of public order; for , its inevitable consequence is bound to be disturbance of the public order of breach of the peace as is amply evidenced in this case by the fact that eventually it resulted in the murder of a person. The offences in this case, therefore, fall within the meaning of the expression "affecting the maintenance of public order". The words "con-cerned in" mean "to have a part or share in, being engaged in". It is not the expectation of the section that the entire inhabitants of the locality as a whole must take part in the offences in question. The very purpose of collective fine is to impress upon the law abiding citizens.

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the necessity of keeping their unruly brethren in order and thus ensure that public order is maintained. The provision for exemption also makes it clear that the section does not require that the entire population as a whole must be concerned in the offences. In this case, therefore, the strict letter of the law would be complied with if Government were to hold that they were satisfied upon the basis of the two murders and the offence of grievous hurt committed in this locality and particularly upon the genesis of one of the murders, namely, that of Gordhandas Maharaj.

2. However, the question of expediency must receive due consideration. Two of the offences are of an ordinary character such as may have been especial committed in any other locality and have no special concern with the set-up of this particular locality. The third, namely, the murder of Gordhandas Maharaj does appear to be of the nature of a collective reprisal. However, it is sub-judice as the other offences also are, and the accused are likely to make the complaint, if collective fine is imposed at this stage, that such action on Government's part has prejudiced their defence by bringing pressure upon the members of the locality who would have otherwise come forward to help them in their defence. It would, therefore, be better to await the result of the trials. Even if the trials end in acquittal, if it is proved that the offence was of the nature of a collective reprisal, that would be a sufficient ground for imposing collective fine taken together with the other offences, inasmuch as the section requires the commission of more than one offence.

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O.C. Remembrancer of Legal Affairs.

U.R. to D.O. No. 676-Genl, dated 14th July 1952. S.A.K./16-6

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The scheme of section 7 of the Bombay Public Security Measures Act, 1947, seems to be as follows. In the first place the State Government is to be satisfied that it is necessary in the interest of public order to prohibit or restrict in any area any exercise, movement, evolution or drill of a military nature specified in the order. It will be noted that the prohibition or restriction etc. is to be in the interest of public order, and it applies to any exercise, movement etc. irrespective of the fact whether the exercise or movement etc. is held by any particular class of persons or organisations . In other words the restriction or prohibition is directed towards the nature of the exercise, movement etc. and does not depend upon or relate to persons or organisations performing them. Once the exercise etc. is so prohibited or restricted, it becomes an unauthorised exercise. Sub-section (2) then comes into play. That sub-section as enacts that with a view to securing that no unauthorised exercise, movement etc. is performed at any place, the State Government may by general or special order prohibit, restrict or impose conditions as to the holding of, or taking part in, any camp, parade, meeting, assembly or procession by any class of persons or organisations specified in the order. Under this sub-section, therefore, the State Government is authorised to prohibit, restrict etc. the holding of or taking part in any camps, parades etc. This sub-section does not prohibit the exercise itself but prohibits or restricts the holding of camps with a view to avoiding an unauthorised exercise being held by any class of persons or organisations. It is for the purpose of the prohibition or restriction regarding the holding of or taking part in camps, parades etc. that the reference to class of persons

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or organisations becomes relevant, since the order restricts or prohibits the holding of camps etc. by any class of persons or organisations . It will be noted that no consideration of any likelihood of public order being prejudicially affected by the class of persons or organisations arises under sub-section (2).

2 The notification in question reverses the position by stating that Government is satisfied ~~the position by stating that Government is satisfied~~ that certain organisations specified therein are a menace to the maintenance of public order and are likely to disturb the same and then goes on to say that Government is satisfied that it is necessary in the interest of public order to prohibit the exercise etc. by any of the said organisations. Th notification, therefore, does not follow the scheme of the section.

3. Even if it were to follow that scheme faithfully, the next question which arises is the constitutionality of the provisions contained in section 7. Article 19(1)(b) guarantees to all citizens the right to assemble peaceably and without arms; and sub-clause (d) guarantees the further right of moving freely throughout the territory of India. Reasonable restrictions can be imposed on the right contained in sub-clause (b) in the interest of public order and on the right contained in sub-clause (d) in the interest of the general public. The question will arise whether a provision which permits a State Government in the interest of public order to impose a total prohibition on any kind of exercise, movement, evolution or drill of a mili-tary nature in any particular area can be said to contain a reasonable restriction in the interest of public order. This question is quite distinct from the one which was considered by the Supreme Court in the case of State of Madras v. Row. In

my opinion the prohibition of this kind is not likely to be held as reasonable restriction. It is in that connection that it must be recalled that the prohibition is not made relatable to the likelihood of any breach of public order because of the exercise being held by a particular body of persons. The proper course would be to combine the two provisions in sub-sections (1) and (2) by taking power to prohibit the holding of exercise etc. by any particular body if the State Government is satisfied that the prohibition on the holding of such exercise by that body is necessary in the interest of public order, and then to take the further power of banning the holding of camps etc. by such body for the purpose of holding such exercise. The analogy of processions etc. not being allowed without previous permission is of doubtful value, since that course itself is being challenged by questioning the validity of section 144 of the Code of Criminal Procedure.

4. The remarks made above in paragraph 1 apply also to the other notification under section 8. The constitutionality of section 8 will depend upon how far it can be said to impose a reasonablye restriction on the right to acquire, hold and dispose of property contained in clause 19(1)(f) read with sub-clause (5) of that Article. Here again a general prohibition of this kind is likely to be assailed as unconstitutional and it may, therefore, be safer to follow the suggestions made in respect of s ction 7.

Sd/-P.M.Lad
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O.O. Remembrancer of Legal Affairs.

U.R. to M.D.No. 1275/B Secret dated 20th November 1952

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